

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-smb

4 - - - - - x

5 In the Matter of:

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7 BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

8

9 Debtor.

10 - - - - - x

11 Adv. Case No. 08-01789-smb

12 - - - - - x

13 SECURITIES INVESTOR PROTECTION CORPORATION,

14 Plaintiff,

15 v.

16 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,

17 Defendant.

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1 Adv. Case No. 10-04889-smb

2 - - - - - x

3 IRVING PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

4 MADOFF INVESTMENT SECURITIES LLC,

5 Plaintiff,

6 v.

7 THE ESTATE OF ROBERT SHERVYN,

8 Defendant.

9 - - - - - x

10 United States Bankruptcy Court

11 One Bowling Green

12 New York, NY 10004

13

14 March 28, 2020

15 9:59 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: UNKNOWN

1 HEARING re 08-01789-smb Conference on Letter of Baker &
2 Hostetler dated March 5, 2020 re Mediation.

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4 HEARING re 10-04889-smb Status Conference

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

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17 ALSO PRESENT TELEPHONICALLY:

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19 DAVID SHEEHAN

20 KEVIN BELL

21 ANDREW VELEZ-RIVERA

22 PAUL SCHWARTZBERG

23 ROBERT WOLF

24 JAMES HUNT

25 ESTHER MCKEAN

1 DAVID PARHAM
2 HANH HUYNH
3 PAUL RUBIN
4 SANFORD ROSEN
5 PARIS GYPARAKIS
6 NADER MOBARGHA
7 LEO PLOTKIN
8 STEVEN AMSHEN
9 ANNIE DREISBACH
10 ANNELYSE GIBBONS
11 CHAD HUSNICK
12 PETER ARONOFF
13 ALAN NISSELSON
14 SHANNON HOPKINS
15 APRIL HARRIOT

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1 P R O C E E D I N G S

2 THE COURT: Okay. The first matter is Madoff.

3 MR. CREMONA: Good morning, Your Honor. Nicholas
4 Cremona of BakerHostetler appearing on behalf of Irving
5 Picard as SIPC Trustee.

6 Before the Court this morning as a follow-up to
7 our status conference on May 14 to discuss the approach to
8 prospective mediations in the remaining adversary
9 proceedings with Chaitman, LLP, as we discussed with Your
10 Honor on May 14, the parties conducted a mediation in the
11 Meisels case, which is Adversary Proceeding Number 10-04428,
12 on April 24 with former judge Allen Hurkin-Torres as a test
13 case. That mediation remains ongoing, and the parties have
14 exchanged settlement offers and are in the process of
15 scheduling another group session.

16 Based on the progress --

17 THE COURT: There's some background noise on your
18 phone. Could you mute the background noise somehow?

19 MR. CREMONA: I'm sorry, Your Honor.

20 THE COURT: Okay.

21 MR. CREMONA: Based on the progress made in that
22 mediation, the parties agree that mediation in the remaining
23 cases would be productive and is the best course of -- move
24 the cases forward toward resolution.

25 Since the last hearing, the parties have met and

1 conferred to discuss a mediation protocol that prioritizes
2 the remaining 60 adversary proceedings at issue to move them
3 into mediation over the next several months. To that end,
4 the parties have agreed on a protocol which I'd like to
5 present to the Court.

6 THE COURT: Okay.

7 MR. CREMONA: The parties agree to prioritize to
8 proceed with the mediations in three waves as follows. The
9 first wave of cases will consist of what we refer to as
10 Category 1 cases, which are the 25 cases where the
11 defendants filed claims and pending objections to the
12 Trustee's determination of (sound drops). And the parties
13 agree that the Court has equitable jurisdiction in those
14 cases.

15 Upon completion of mediation in all of the
16 Category 1 cases, the parties will schedule mediations in
17 what we refer to as the Category 2 cases, which consist of
18 18 cases where defendants filed claims but did not object to
19 the Trustee's determination of those claims.

20 And, finally, the last wave of mediation will
21 address the Category 3 cases, which consist of 17 cases
22 where the defendants did not file customer claims to the
23 extent that those cases are still pending after all other
24 mediations are completed.

25 We agree that the Category 1 cases will proceed

1 before the bankruptcy court to the extent that the cases are
2 not consensually resolved through the mediation process.
3 We'll proceed with the second wave of mediations in the
4 Category 2 cases once we have a determination of the effect
5 of a defendants' filing of a customer claim on the extent of
6 this Court's jurisdiction. To the extent that's not already
7 resolved by Judge Broderick's Mann decision denying a motion
8 to withdraw the reference.

9 And as we discussed at the last hearing, that
10 issue is currently (sound drops) before two district court
11 judges on pending motions to withdraw the reference, namely
12 Judge Swain in the Savin case, which is Adversary Proceeding
13 Number 10-04889 and Judge Schofield in the Greiff case,
14 which is Adversary Proceeding Number 10-04357. We will
15 proceed with the Category 3 cases last, as the parties have
16 agreed those cases should move forward before the district
17 court on summary judgment in the first instance.

18 The parties further agree that we will begin
19 scheduling mediations at the rate of one per week until all
20 mediations are completed in accordance with the priority I
21 just outlined. The parties have contacted Former Judge
22 Hurkin-Torres who's presiding over the Meisels case and
23 confirmed his ability and willingness to serve as mediator
24 in additional cases. We will endeavor to coordinate with
25 Judge Hurkin-Torres to serve as the mediator in these

1 Category 1 cases.

2 To the extent that he cannot serve, the parties
3 will consider former bankruptcy Judges Steckroth, Gerber,
4 Gonzalez, and Lyons who are all court-approved mediators.
5 To the extent that the parties are unable to agree to a
6 mediator, we agree to have Your Honor appoint a mediator in
7 accordance with the avoidance actions procedures set forth
8 in the litigation procedures order.

9 Your Honor, I believe I've accurately reflected
10 the agreement of the parties. And if this proposed protocol
11 is acceptable to Your Honor, the parties will proceed
12 implementing it as soon as possible and continue over the
13 next several months.

14 THE COURT: Is this going to embodied in a written
15 stipulation?

16 MR. CREMONA: We're happy to do that, Your Honor.

17 THE COURT: I mean it's very detailed on the --
18 well, it's sort of detailed on the record. Let me ask Ms.
19 Chaitman if she agrees with the recitation of the agreement.

20 MS. CHAITMAN: Good morning, Your Honor. I do
21 except for one thing. We have taken the position that the
22 bankruptcy court does not have jurisdiction over any of the
23 cases. I just wanted to clarify that Mr. Cremona said that
24 the parties had agreed that the bankruptcy court has
25 jurisdiction over the Category 1 cases. We -- obviously,

1 that's a Second Circuit issue, and we're not in a position
2 to appeal it right now. But I just wanted to make that one
3 clarification.

4 Other than that, I agree with everything Mr.
5 Cremona said.

6 THE COURT: Is that acceptable, Mr. Cremona? I
7 certainly have jurisdiction to authorize the mediations,
8 even those before the district court, I would assume, on the
9 motions to withdraw the reference --

10 MS. CHAITMAN: I don't dispute that, Your Honor.
11 No.

12 THE COURT: All right. So are the parties in
13 agreement, Mr. Cremona, with Ms. Chaitman's qualification?

14 MR. CREMONA: We are in agreement, Your Honor.

15 THE COURT: All right. Then I will so order the
16 record. You should proceed -- what I'll do is I'll schedule
17 another conference about a month out.

18 Mike, give me a date about a month from now. It
19 can be on a Tuesday or a Thursday. It doesn't have to be a
20 Wednesday.

21 MS. CHAITMAN: Your Honor, I don't know that a
22 month would make a difference because we're just going to be
23 -- we're contemplating starting the mediations at the end of
24 June. So a month.

25 THE COURT: All right. I'll do it the end of July

1 then. Fear not.

2 MS. CHAITMAN: I think that --

3 THE COURT: Mike, give me a date --

4 MS. CHAITMAN: If Mr. Cremona agrees, I feel that,
5 you know, that would be more productive.

6 THE COURT: Mr. Cremona?

7 MR. CREMONA: I agree.

8 THE COURT: All right.

9 Mike, could you give me a date at the end of July?

10 CLERK: The omnibus day in July is July 29th,
11 Judge; Wednesday.

12 THE COURT: Okay. We'll use that. July 29 at 10
13 o'clock. Okay?

14 MS. CHAITMAN: Okay; thank you so much, Judge.

15 THE COURT: Thank you.

16 (Whereupon these proceedings were concluded)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in dark ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: June 8, 2020

[& - customer]

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